

the last request from the same issuer;

- (d) it is not vexatious or frivolous, and does not duplicate previous requests without reasonable cause.

5.3.2 R For the purposes of DTR 5.3.1 R(1)(a):

- (1) ~~Transferable securities~~ and options ...

...

5.3.3 G (1) For the purposes of DTR 5.3.1 R(1)(a) and to give effect to Directive 2004/109/EC (TD), qualifying financial instruments.... Consequently, qualifying financial instruments ...

- (2) For the purposes of DTR 5.3.1 R(1)(b), in the FSA's view a comparable financial instrument has a similar economic effect to a qualifying financial instrument in DTR 5.3.1 R(1)(a), if its terms are in any way related or referenced, in whole or in part, to an issuer's shares, and, generally, the holder of the comparable financial instrument has, in effect, a long position on the economic performance of the shares.

- (3) (a) In the FSA's view, for the purposes of DTR 5.3.1 R(4) an issuer may have reasonable cause to believe that a person may hold an interest in the issuer's shares by virtue of their holding a comparable financial instrument in the following non-exhaustive list of circumstances:

(i) if the person approaches the issuer (directly or indirectly) attempting to influence its management on the basis, in part or whole, of the person's holding of a comparable financial instrument; claiming to have access to or control over a material proportion (in the issuer's reasonable view) of shares or voting rights in the issuer, or otherwise implying that the issuer should have regard to the holder's interest;

(ii) if the issuer is aware of significant press speculation or market rumour (not instigated by the issuer itself) identifying the person, for a particular reason over and above that person's status as a particular type of firm, as potentially interested in gaining access to or control over a material proportion of the shares or voting rights of the underlying issuer by virtue of its holding of comparable financial instruments and the issuer has made reasonable endeavours to satisfy itself that the speculation or rumour is not frivolous or vexatious.

- (b) A form ([to be completed]) which may be used to send reasonable requests to persons for the purposes of DTR 5.3.1 R(4) is available on the FSA's website at [to be completed].

(c) For the purposes of DTR 5.3.1 R(4)(d) an issuer's request is unlikely to be reasonable if the issuer has already sent a reasonable request to the same person and there has been no material change in circumstances to warrant the sending of a further request. Multiple requests in a relatively short period based on substantially similar press speculation or market rumour may tend to indicate that an issuer does not have reasonable cause to believe that the person's position has changed sufficiently to avoid duplication with previous requests.

(4) For the purposes of DTR 5.3.1 R(2)(a), the terms of the comparable financial instrument should be considered as a whole including any side letters or agreements which may affect the terms. Reference to a 'provider' of a comparable financial instrument includes any provider or issuer of such an instrument and includes, for example, a writer of a CFD.

(5) For the purposes of DTR 5.3.1 R(2)(a):

(a) 'arrangements' includes (but is not limited to) any discussions between the holder and the provider about the possibility of the disposal on, or shortly after maturity, of relevant shares; and

(b) 'understanding' includes (but is not limited to) any formal or informal understanding including that based on a firm or clear expectation arising in the circumstances.

5.3.4 R The holder of qualifying financial instruments and comparable financial instruments (excluding comparable financial instruments notifiable solely upon an issuer's reasonable request) is required to aggregate and, if necessary, notify all such instruments as relate to the same underlying issuer.

...

...

5.7.1 R Unless 5.7.1AR applies, A a person making a notification in accordance with DTR 5.1.2 R must do so by reference to each of the following:

(1) the aggregate of all voting rights which the person holds as shareholder and as the direct or indirect holder of qualifying and comparable financial instruments (excluding comparable financial instruments notifiable solely upon an issuer's reasonable request);

...

(3) the aggregate of all direct and indirect holdings of qualifying and comparable financial instruments (excluding comparable financial instruments notifiable solely upon an issuer's reasonable request).

5.7.1A R A person making a notification of comparable financial instruments upon an issuer's reasonable request must do so by reference to the aggregate of direct and indirect holdings of all such comparable financial instruments as relate to the

same underlying issuer.

- 5.7.2 G The effect of DTR 5.7.1R is that a *person* may have to make a notification if the overall percentage level of his voting rights (ignoring for these purposes comparable financial instruments notifiable solely upon an issuer's reasonable request) remains the same but there is a notifiable change in the percentage level of one or more of the categories of voting rights held. DTR 5.7.1AR makes clear that comparable financial instruments notifiable solely upon an issuer's reasonable request are not aggregated with other types of notifiable interest, but are aggregated only with all such other comparable financial instruments as relate to the same underlying issuer.

- 5.8.2 R (1) A notification required of voting rights arising from the holding of qualifying or comparable financial instruments must include the following information:
- ...
- (f) ... ; and
- (g) name of the underlying issuer; and
- (h) in the case of a comparable financial instrument notifiable upon an issuer's reasonable request, the reasons given by the issuer for sending the request.
- ...

- 5.8.3 R The notification to the *issuer* shall be effected:
- (1) as soon as possible, but not later than four *trading days* in the case of a *non-UK issuer* and two *trading days* in all other cases, the first of which, unless (2) applies, shall be the day after the date on which the relevant *person*:
- (1a) ...
- (2b) ...
- (2) in relation to a notification of a comparable financial instrument:
- (a) following an issuer's reasonable request, the first trading day shall be the day after the date on which the relevant person receives the reasonable request; and
- (b) where the 'non-disclosure' conditions in DTR 5.3.1(1)(b)(ii) are relied upon the first trading day shall be the day after the date on which the conditions no longer continue to be satisfied.
- ...

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...

(1)	(2) Material to which the transitional provisions applies	(3)	(4) Transitional Provisions	(5) Transitional provisions: dates in force	(6) Handbook provision: coming into force
...					
<u>14</u>	<u>DTR 5.3.1(2)(b)</u>	<u>R</u>	<u>The notification requirement arising under DTR 5.3.1(2)(b) does not apply to <i>comparable financial instruments</i> entered into prior to the date in column (6).</u>	<u>[September 2008]</u>	<u>[September 2008]</u>

OPTION 3
DISCLOSURE AND TRANSPARENCY RULES (DISCLOSURE OF ECONOMIC INTERESTS) INSTRUMENT 2008

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 73A (Part 6 Rules);
 - (2) section 89A to 89G (Transparency obligations); and
 - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [September] 2008.

Amendments to the Handbook

- D. The Disclosure Rules and Transparency Rules sourcebook (DTR) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Disclosure and Transparency Rules (Disclosure of Economic Interests) Instrument 2008.

By order of the Board
[] 2008

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text.

Insert the following new definition in the appropriate alphabetical position:

comparable financial instrument (in DTR):

(i) a transferable security; or

(ii) an option, future, swap, forward rate agreement or derivative contract, as referred to in Section C of Annex 1 of MiFID,

having similar economic effect to a qualifying financial instrument in DTR 5.3.1 R(1) (but not including any such instrument) whether or not the financial instrument having similar economic effect results in an entitlement to acquire shares.

Annex B

Amendments to the Disclosure Rules and Transparency Rules sourcebook (DTR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 5.1.2 R Subject to the exemption for certain third country *issuers* (DTR 5.11.6R), a *person* must notify the *issuer* of the percentage of its voting rights he holds as *shareholder* or through his direct or indirect holding of qualifying or comparable financial instruments falling within DTR 5.3.1R (or, ~~for interests other than comparable financial instruments,~~ a combination of such holdings) if the percentage of those voting rights:
- (1) reaches, exceeds or falls below 3%, 4%, 5%, 6%, 7%, 8%, 9%, 10% and each 1% threshold thereafter up to 100% (or in the case of a non-UK *issuer* or a *person* holding a *comparable financial instrument* on the basis of thresholds at 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%) as a result of an acquisition or disposal of *shares* or *financial instruments* falling within DTR 5.3.1R.
- ...
- 5.3.1 R (1) A *person* must make a notification in accordance with the applicable thresholds in DTR 5.1.2R:
- (a) in respect of any *qualifying financial instruments* which they hold, directly or indirectly, which result in an entitlement to acquire, on such holder's own initiative alone, under a formal agreement, *shares* to which voting rights are attached, already issued, of an *issuer*; ~~or~~
- [Note: article 13(1) of the TD]
- (b) unless (2) applies, in respect of any comparable financial instrument which, directly or indirectly, the person holds.
- (2) Paragraph (1)(b) does not apply if public disclosure has already been made of information regarding the same transactions (whether or not to the same level of detail) pursuant to the Takeover Code.
- 5.3.2 R For the purposes of DTR 5.3.1R(1)(a):
- (1) ~~Transferable securities and options,~~ qualifying financial instruments....
Consequently, qualifying financial instruments
- ...
- 5.3.3 G (1) For the purposes of DTR 5.3.1R(1) and to give effect to Directive 2004/109/EC (TD) ...

(2) For the purposes of DTR 5.3.1R(1)(b), in the FSA's view a comparable financial instrument has a similar economic effect to a qualifying financial instrument in DTR 5.3.1R(1)(a), if its terms are in any way related or referenced, in whole or in part, to an issuer's shares and, generally, the holder of the comparable financial instrument has, in effect, a long position on the economic performance of the shares.

5.3.4 R The holder of qualifying financial instruments is required to aggregate and, if necessary, notify all such instruments (not including comparable financial instruments) as relate to the same underlying issuer. The holder of comparable financial instruments must aggregate and, if necessary, notify all comparable financial instruments held as relate to the same underlying issuer.

5.3.5 G The effect of DTR 5.3.4R is that qualifying financial instruments are to be aggregated with other qualifying financial instruments as relate to the same underlying issuer but should not be aggregated with comparable financial instruments. The holder of comparable financial instruments is required to aggregate and, if necessary, notify all such comparable financial instruments as relate to the same underlying issuer, but such instruments should not be aggregated with qualifying financial instruments (nor, by virtue of DTR 5.1.2R, should they be combined with any other holdings).

5.7.1 R Unless 5.7.1AR applies, A a person making a notification in accordance with DTR 5.1.2R must do so by reference to each of the following:

(1) the aggregate of all voting rights which the person holds as shareholder and as the direct or indirect holder of qualifying financial instruments;

...

(3) the aggregate of all direct and indirect holdings of qualifying financial instruments.

5.7.1A R A person making a notification of comparable financial instruments must do so by reference to the aggregate of direct and indirect holdings of all such comparable financial instruments as relate to the same underlying issuer.

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